

Remarks:

This is a full and complete response to the Office action dated October 29, 2009 and advisory action of July 12, 2009. Favorable reconsideration is respectfully requested.

REGARDING THE CLAIMS:

Claims 8-21 are pending. No amendments are made with this reply. No new matter has been added.

IN RESPONSE TO THE OFFICE ACTION:

REJECTION UNDER 35 U.S.C. § 102:

In the Office Action, three groupings of claims, namely claims 8-12, 13-18, and 19-21 stand rejected under 35 USC §103(a) as being unpatentable over **De Keyzer** WO 02/057386 (herein after "**De Keyzer**"). Applicants respectfully traverse this rejection.

In the Office Action of April 17, 2008, the Examiner took the position that the block copolymers of **De Keyzer** each preferably have a weight average molecular weight ranging from 100,000 to 500,000. The Examiner further stated that the molecular weight of 124,000-145,000 was not disclosed, however it would be obvious to modify **De Keyzer** to this range to achieve optimum operating conditions in the absence of unexpected results.

In the response of July 17, 2008, Applicants presented evidence of experimental results shown in the present application that demonstrate the criticality of the claimed molecular weight range. However, in the Office Action of October 29, 2008, the Examiner asserted that the evidence provided by Applicants' was not commensurate with in scope with the entire claimed range of the ingredients. The Examiner did not take exception to the claimed range of molecular weights which was the basis of Applicants' argument of unexpected results, but instead required evidence showing the entire claimed range of the tackifying resin (250-300 parts by weight).

In the most recent advisory action of January 12, 2009, the Examiner maintained the rejections, asserting that a direct comparison with the closest prior art was not made,

and that the examples were not commensurate in scope with the claims, and furthermore that experimental results need be provided in a Rule 132 affidavit.

Applicants respectfully assert that the examples compare the closest art, and furthermore that the examples are commensurate in scope with the claim. Applicants further note that the examples provided in the application are sufficient to show unexpected results and clearly demonstrate non-obviousness. Applicants have found a particular block copolymer with a specific molecular weight range produces superior results for use in adhesives. Applicants note that the Examples show superior properties were unexpectedly obtained by employing the specific and critical molecular weight range of the block copolymer according to the present claims. *MPEP §716.02(a), §2144.05(III).*

In addition to demonstrating the unexpectedly superior properties obtained by employing the particular block copolymer in adhesive compositions, Applicants have additionally shown these superior properties at two data points for the tackifying resin in the Examples, namely 250 parts by weight in Table 4 and 272 parts by weight in Table 5 of the present Application. Accordingly this supports the weight range of 250 to 300 parts by weight in claim 1, and especially the 250 to 272 parts by weight range in claims 11-12 and 15-16. Applicants respectfully assert that additional data should not be required regarding the range of tackifying resin.

Applicants submit that it is the specific and critical molecular weight range which has been shown to produce unexpectedly superior results. Accordingly, if tackifying resins are used in an amount conventionally known in the art, unexpected results are still sufficiently shown because of the demonstration of unexpected results with regard to the molecular weight range. *MPEP §716.02(a), §2144.05(III).*

Applicants note that **De Keyzer** discloses the use of tackifying resins from 50 to 400 parts by weight, and more preferably from 100 to 300 parts by weight. *De Keyzer, pg 8, lines 28-31.* Applicants claimed range of 250 to 300 parts by weight is within this range as conventionally known in the art. Thus, a range conventionally used in the art for tackifying resins is used. However, what is non-conventional, unpredictable and unexpected is that the molecular weight range of the block copolymer from 124,000 to

145,000 produces unpredictably superior results. Accordingly, the superior results from this specific molecular range can be extrapolated across the whole claimed range of tackifying resin from 250 to 300 parts by weight. Therefore, the data provided already with respect to the molecular weight range as well as the tackifying resin content is sufficient to establish non-obviousness.

However, even if tackifying resin content must be shown across the range, Applicants respectfully submit this has indeed been shown in the Application. For example, table 1 employs 250 parts by weight of tackifying resin. Additionally, Table 2 employs 272 parts by weight of tackifying resin. Accordingly, this is more than sufficient to establish the range of from 250 to 280 parts by weight as well as 250 to 300 parts by weight. Furthermore although a different resin is used in table 4 as compared to table 5, and a different absolute viscosity results, in both cases the trend is the same – a superior viscosity is obtained in the examples according to the claimed invention. Accordingly, Applicants submit that the present examples provided in the Application sufficiently show the superior results commensurate in scope with the claims. *MPEP 716.02(d).*

Although the advisory action of January 12, 2009 asserts that a comparison between the closest prior art need be made, Applicants respectfully submit that the examples do indeed compare the closest art. Specifically, the advisory action states that although formulation 19 in table 9, page 28 of **De Keyzer** is compared in the present application, a different tackifying resin is used (R-1090 v R-7100) and a change in tackifying resin can effect the composition. Furthermore, it is asserted that **De Keyzer** measures the viscosity at 177°C.

Applicants respectfully submit that Applicants did indeed employ the closest art in its examples. Applicants note that it matters little that a different tackifying resin was employed in the present examples as that in **De Keyzer**. The same tackifying resin as in De Keyzer need not be used in order to show that superior results are obtained by employing the claimed block copolymer for an adhesive composition. Applicants examples demonstrate superior results are obtained by employing a particular block copolymer with a specific molecular weight range for an adhesive composition. Even

though a different resin than **De Keyzer** is used, **the tackifying resin in Example 1 is held constant** for all the block copolymers employed in Table 1. **This allows a direct comparison of the block copolymer in De Keyzer to the block copolymers encompassed by the present claims.** While different viscosity numbers may be obtained with a different tackifying resin, superior results would still be obtained as shown by this direct comparison in the examples of the application.

Additionally, the temperature of 177°C which was used in **De Keyzer** also need not be provided in new results as asserted by in the advisory action. This is because superior results are shown for adhesive compositions having the claimed molecular weight range for temperatures from 130°C to 160°C. Such superior results are significant for this temperature range because of applications which require low viscosity in this range. *See Application, paragraph [0010]*. Furthermore, the block copolymer of **De Keyzer** is compared to the block copolymer according to the present claims at these temperatures, and **thus a direct comparison is provided in the examples of the present application.**

As shown in Example 1, table 4 of the application, several block **copolymers A, C-H having molecular weights within the claimed range** are compared to Polymer B, **which Polymer B is outside of the claimed molecular weight range.** Thus, there is a **direct comparison** of block copolymers with molecular weights within the claimed range with a block copolymer outside of the claimed range. As can be seen in Table 2, compositions having copolymers A, C-H produce much lower viscosities.

TABLE 4

(Viscosities in Pa · s)									
Temp.	D-1165	A	B ^o	C	D	E	F	G	H
130° C.	79.4	25.7	110	25	33.4	31	16.3	29.4	23.4
140° C.	20.7	10.2	26.6	11.1	14.7	12.8	6.9	11.4	10.7
150° C.	7.6	5.5	12	6.8	8.3	7.2	3.8	6	6.1
160° C.	3.6	3.6	8.2	4.4	5.3	4.6	2.4	3.6	4

^ocomparative block copolymer outside the present invention.

From the above it is clear that the criticality of the claimed range is demonstrated by the provided examples. Thus, superior results are shown for the compositions having the block copolymers with the specific molecular weight range of a molecular weight of 124,000 to 145,000. Accordingly, the same tackifying resin as **De Keyzer** not need be used because superior results are obtained by use of the block copolymer of the present claims. Additionally, Applicants further submit that no Rule 132 affidavit need be supplied. Applicants note that the data in the examples section of the application, including both Tables 4 and 5 were included in the initial filing of the application, and furthermore an oath/declaration was additionally filed with the Application. As an oath/declaration has already been provided, no Rule 132 declaration need be provided for the experimental data in the Application and discussed in this reply.

The Supreme Court in *KSR* confirmed that secondary considerations would be taken into account in determinations of obviousness. Additionally, the Supreme Court in *KSR* stated that modifications must do more than yield predictable results. See *KSR Int'l v. Teleflex Inc.*, 127 S.Ct. 1727, 82 USPQ2d 1385, 1397 (2007). As the experimental results in the Application discussed above **would not be predictable** to one of ordinary skill in the art, and furthermore such results demonstrate the criticality of the claimed range, Applicants submit that no prima facie case of obviousness may be established. Accordingly, Applicants request the above mentioned rejections be withdrawn.

In view of the comments above, it is respectfully requested that the rejections be withdrawn and a Notice of Allowance issue with respect to the currently pending claims.

The undersigned representative requests any extension of time that may be deemed necessary to further the prosecution of this application.

The undersigned representative authorizes the Commissioner to charge any additional fees under 37 C.F.R. 1.16 or 1.17 that may be required, or credit any overpayment, to Deposit Account No. 14-1437, referencing Attorney Docket No.: 8132.102.PCUS00.

In order to facilitate the resolution of any issues or questions presented by this paper, the Examiner may directly contact the undersigned by phone to further the discussion.

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Respectfully submitted,

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